

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL SALVADOR GARCIA,)	
)	
Petitioner,)	No. C 11-0160 CRB (PR)
)	
vs.)	ORDER REOPENING CASE
)	AND LIFTING STAY; AND
MICHAEL STAINER, Acting Warden,)	ORDER TO SHOW CAUSE
)	
Respondent.)	(Docket # 7 & 8)
_____)	

Petitioner, a state prisoner at the California Correctional Institution in Tehachapi, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Contra Costa County Superior Court. He also seeks appointment of counsel.

BACKGROUND

Following a jury trial, the jury convicted petitioner of second degree murder and found two firearm enhancement allegations to be true. On December 8, 2006, the court sentenced petitioner to 40 years to life in state prison.

Petitioner unsuccessfully appealed to the California Court of Appeal and the Supreme Court of California, which denied review on July 22, 2009. He then began seeking collateral relief from the state courts.

Petitioner seeks federal habeas corpus relief by raising six claims, including improper admission of evidence, ineffective assistance of counsel and insufficiency of the evidence. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

C. Request for Appointment of Counsel

Petitioner's motion for appointment of counsel (docket # 8) is DENIED without prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986) (unless an evidentiary hearing is required, the decision to appoint counsel in habeas corpus proceedings is within the discretion of the district court). Petitioner adequately presented his claims for relief in the petition (albeit with the assistance of another prisoner) and an order to show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no background in law, denial of appointment of counsel within discretion of district court where petitioner clearly presented issues in petition and accompanying memorandum). The court will appoint counsel on its own motion if an evidentiary hearing is later required. See Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary hearing is required).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall reopen this matter and serve a copy of this order, and the petition and all attachments thereto, on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

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4